



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LAT, RR, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to change the locks on his rental unit, a monetary order for compensation for a loss suffered under the Act, and an order to allow the tenant a rent reduction for repairs, services, or facilities agreed upon but not provided. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on or about April 1, 2011 for a fixed term of one year. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$475.00.

This is the third hearing involving these two parties resulting from a large improvement project being undertaken throughout a ten story complex.

Both parties agree that as of today's date all work has been completed.

The tenant gave the following testimony; contrary to a previous dispute resolution officers' decision; the landlord is not abiding by the terms for entry of his rental unit,

suffers from anxiety and lack of sleep due to the scheduling of the renovation work, his work hours at his job are 9:00pm-5:00am, has allowed workmen in on several occasions and has denied workmen entry on several occasions due to his frustration with this situation, did not mention his frustration to the workers as he felt he should not take out his anger or displeasure out on them as they are not responsible for the lack of notice of the entry times, insists that as per the previous dispute resolution officers decision he must give the landlord signed consent of entry into his unit, not opposed to the work getting done but would like to be involved with the timing of it, landlord entered the unit without the tenant's permission on December 16, 22, January 6, 9, 10, 11, feels that half a month's rent plus the filing fee for two more hearings is fair compensation, is using dispute resolution as a last resort and didn't wish to go this route.

The landlord gave the following testimony; did not receive the decision of the hearing that the tenant is relying on until December 21, 2011, misinterpreted the decision, believed the conditions of entry were that the landlord was to give the specific date, time and type of work that was to be conducted, disputes some of the dates the tenant says workmen entered the unit, does agree that work was conducted in the unit on January 6, 10, 11, 2012, tenant denied access to the landlord and building inspector yesterday, since the previous hearing has given the tenant a minimum of three days' notice of any request to enter the unit, does not feel any compensation is warranted.

Analysis

Both parties provided documentation and testimony for this hearing and was considered in making the decision.

The tenant is the sole applicant in this matter and I address each item of the tenant's application as follows;

The tenant is seeking a rent reduction for repairs, services or facilities agreed upon but not provided. The tenant failed to provide sufficient evidence to support this portion of his claim. The tenant has not suffered any monetary loss, or any loss of services or facilities. As previously stated the work has been completed and there have been no

further incident's since the date of completion except for the tenant's denial of access for an inspection yesterday. The tenant has not put forth any new evidence for me to consider. Based on the lack of evidence presented to me during the hearing and lack of documentation, this portion of the tenant's application is dismissed.

The tenant is also seeking an order to have the locks changed on his unit. Section 31(3) of the Act states "A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change. In the case before me the landlord has not given their consent in writing. The landlord has the right to enter a unit under certain conditions. The landlord's entry was based on conducting work to improve the building for the benefit of the tenants and the landlord made it clear that the tenant was given a minimum of three days notice that specified the date, time and type of work to be conducted each time they intended to have workmen enter the unit. The landlord has also advised that other than requesting access yesterday to go into the suite for an inspection, there is no longer any immediate need to enter the unit. I do not see the need to have the locks changed and I decline to make that order. This portion of the tenant's application is dismissed.

The tenant is also seeking compensation for having damage or loss suffered under the Act. The tenant's position is that he should be entitled to half a month's rent as well as the \$50.00 filing fee X 2 hearings for a total of \$575.00. The tenant's application indicates \$650.00 however the tenant amended that amount during the hearing. The tenant is primarily relying on the wording from a previous decision that states the landlord is to enter on specific conditions with the written agreement of the tenant. The landlord has explained several times during the hearing of their misinterpretation of this as well to point out that the same wording of that decision allows them access when conducting an inspection, access which they were denied by the tenant yesterday. I find that the landlord gained access to the unit as in accordance with the Act to carry out necessary repairs that would ultimately benefit the tenant and did not cause the tenant to suffer any loss.

The timeline before me that I must deal with is from December 21, 2011; that's when the landlord advises receipt of the previous decision and I accept that is the case, to January 15, 2012; the completion date of the project. The landlord provided evidence that no work was conducted from December 23, 2011- January 2, 2012. The landlord advised that entry into the subject unit occurred on three separate days in January. The tenant advised that entry occurred on six different days through December and January. The tenant provided a letter from his girlfriend that states he was unable to sleep on December 26 and 27 "due to the heavy construction still taking place in the building". This is in direct contradiction to what the landlord stated during the hearing, this in addition to the landlord and tenant's disagreement of actual days that workmen entered the unit raises uncertainty.

The tenant's own documentary evidence and testimony during the hearing was contradictory at times and raises questions as to whether the tenant recalled the events clearly. I do accept that the tenant was inconvenienced during the building improvement however I do not find that it was unreasonable considering the scope and magnitude of the work being conducted during the specific time frame of December 21, 2011- January 15, 2012. The tenant often referred to the totality of this ongoing issue and construction from beginning to end. The tenant has already applied for dispute resolution for the time frame previous to what's before me and has already had a hearing in regards to that time frame. However for the purposes of this very limited window of time I am not satisfied the tenant is entitled to any compensation and I therefore dismiss this portion of the tenant's application.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim, in this case the tenant. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant has not met that test in the matter before me.

As the tenant has not been successful in their application the tenant is not entitled to the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 15, 2012.

Residential Tenancy Branch

